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ABSTRACT

Legal questions, raised by recent developments in computerized networks and relating to censorship, liability, responsibility and other topics, were explored by means of a questionnaire sent to a selected group of librarians, network personnel, and others. Designed to collect information about existing laws and current problems, the questionnaire elicited opinions which suggest that (1) networks cannot refuse questionable titles, (2) authors or publishers cannot demand the exclusion of titles from the database, (3) the networks probably cannot refuse "insignificant" titles, (4) networks probably cannot refuse membership without legitimate reasons, and (5) all parties have due process rights in dealing with parent networks. Limited amount of experience and the complete lack of litigation in this area, however, leave the specific questions unanswered. A 30-item bibliography and the questionnaire are appended. (Author/RAA)

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LEGAL RAMIFICATIONS OF COMPUTERIZED LIBRARY NETWORKS

AND

THEIR IMPLICATIONS FOR THE LIBRARY DIRECTOR

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INTRODUCTION

The recent development of computerized library networks is bringing a new dimension to the flow of ideas. The United States has had a tradition of intellectual freedom and a firm legal foundation to support that tradition. The computerized dimension introduces new possibilities for the use or misuse of this freedom.

The advent of the library network calls for a new look at intellectual freedom, related legal questions and the specific implications for the network.

One of the most significant statements, concerning intellectual freedom, to be found in American literature, was made by Chief Justice Oliver Wendall Holmes. It bears repeating here, "Persecution for the expression of opinions seems to me prefectly logical. If you have doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas - that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. While that experiment is part of our system

I think we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country... Only the emergency that makes it immediately dangerous to leave the corection of evil counsels to time warrants making any exception to the sweeping command, "Congress shall make no law... abridging the freedom of speech" (Konefsky, 1961).

The purpose of this paper is to relate the freedom of speech and related legal principles to library network applications. Large data bases filled with the bibliographic information of vast numbers of materials greatly enhances the availability and preservation of a specific item. Are the usual intellectual freedom principles applicable to the information contained in the data bases and/or to the larger volume of information represented by the respective entries? Have library directors and/or network representatives encountered legal problems in this area? Has there been litigation relating specifically to computerized library networks? If so, what are the implications of the litigation? In the absence of answers to the previous questions, what are the opinions of knowledgeable people concerning basic legal applications? This study was designed to find answers to some of these questions.

METHODS AND PROCEDURES

The questionnaire illustrated in Appendix B was prepared and sent, with the cover letter illustrated in Appendix A, to library directors, network representatives, and other persons in positions to be knowledgeable concerning the questions involved. There were thirty-three questionnaires mailed.

Sixteen of the persons who responded returned completed questionnaires. Several persons responded without completing the questionnaires. Each of the latter indicated some reason for feeling that they were not qualified to state opinions.

There was no litigation reported by any of the responses. The comments included were very limited and seemed to reflect some hesitancy.

We will cite each of the questions and show the actual number of responses to each of the possible answers. This will be followed by comments relating to the respective question.

1. Can the networks refuse the inclusion of titles that include obscenity or other inflammatory terminology (such as advocating the overthrow of the government) in the:

   a) actual wording of the title?

      1. No (9) 2. Probably not (5) 3. No opinion (2)

      4. Possibly (0) 5. Yes (0)

   b) within the publication?

      1. No (7) 2. Probably not (6) 3. No opinion (3)

      4. Possibly (0) 5. Yes (0)

The comments concerning this quesiton were: "With respect to 1 and 2, that is my opinion (author's note: each was answered "no"), since no extensive argument (either obscene or treasonous) is included

in the title. Further, in order to get the title published, the words included in the bibliographical information would have already been exposed to public view for some time. 'No' means that my opinion is that it is so unlikely as to be virtually impossible, but I know of no court case."

"I am against censorship in general for many reasons. The exclusion of cataloging data is certainly an extreme form of censorship - the refusal to even recognize the existence of a piece of material. The data base at OCLC already contains cataloging records for materials which some persons would consider pornography or inflammatory. That in no way requires the patron libraries to obtain those pieces of material. All the time-proven arguments against censorship apply doubly to data base censorship."

"In the absence of litigation, questions 1, 2, and 5 are dependent on the bylaws and organization of the individual network."

"Your questions are addressed to what conduct is permissible to 'networks'. In practical point of fact, what conduct is permissible to networks will depend more on the position taken by the copyright proprietors of the works included than on the policies and practices of the American Library Association."

"In this connection, there is no question that if otherwise permitted by law, networks are legally entitled to include in their collection whatever they deem appropriate."

"You will see that most of the questions have been answered by 'probably not;' in many instances the ideas you raise would be impossible to police or monitor vis-a-vis member activities.

Furthermore, the members of ... are the network, and this is an obvious fact. Monitoring input would result in one member passing judgement on the quality of another member's acquisition decision. This is a highly unlikely sequence of events."

2. Can the network refuse the inclusion of "insignificant" publications?

   1. No (4) 2. Probably not (5) 3. No opinion (1)

   4. Possibly (6) 5. Yes (0)

   Comments: "'No' means that my opinion is that it is so unlikely as to be virtually impossible, but I know of no court case."

   "I know of no law which mandates that any library must include any given work or group of works. Moreover, I know of no law which classifies works as 'insignificant' or 'inflammatory', etc. These are judgements which the library and the library network must make..."

3. Can an author (or publisher) demand the exclusion of his title from the data base?

   1. No (5) 2. Probably not (8) 3. No opinion (1)

   4. Possibly (2) 5. Yes (0)

   "I cannot imagine a circumstance which would justify it. Can he require that a library not list the book in the card catalog - though the library has published the book?"

   "An author should have no more right to exclude his work's title from the data base than from a bibliography."

   "As you may know, the subject of the inclusion of copyrighted materials in computers as part of the data bases has been the subject of great controversy and is presently the study of the Commission on New Technological Uses of Copyrighted Works..."

   "We anticipate that with the adoption of the new copyright revision

bill, library networks will be placed under severe scrutiny by representatives of copyright proprietor interests and we would anticipate that a number of suits for copyright infringement will be filed where copyrighted works are introduced into a network or into a data base without the permission of the proprietor."

4. Do authors, publishers, library directors, library patrons, institutions (libraries and/or their parent organizations), regional networks, etc. have due process of rights in dealing with parent networks?

   1. No (1) 2. Probably not (0) 3. No opinion (6)

   4. Possibly (3) 5. Yes (6)

"If you mean by 'due process' access to legal action in the case of dispute, certainly, since all of the persons or organizations are legal entities and subject to suit."

5. Can a network refuse membership to a "qualified" institution?

   1. No (3) 2. Probably not (4) 3. No opinion (2)

   4. Possibly (3) 5. Yes (4)

(Author's note: the answer checked on the questionnaire accompanying this comment was "possibly".) "But not on a censorship basis. A network should definitely have the power to penalize or expel a library which was abusing the system."

"I do not know what 'qualified' means. If a network organized itself for a limited purpose (to include only material on Sheakespeare) and the school were qualified to teach only home economics -- well you follow me. On the other hand, there would have to be a reason for the network to want to exclude the library -- and if it were not financial, I can't think what it would be. There is a problem right now about not-for-profit, educational networks giving service to for-profit companies but we are hoping to get this straightened out.

But otherwise, I feel that though it may be a fiscally foolish thing for a library to get involved with a network (too low acquisition rate, etc.), if the library pays the necessary tariff, let 'em join."

SUMMARY

As indicated earlier, there were no reports received concerning actual litigation in relation to any of the questions.

Question one drew the strongest response. The opinions checked leaned more toward "No" than on any other question. Also, there were more extensive comments made in relation to this question than to any other. The comments tended to substantiate the negative reactions expressed in the opinions section of the questionnaire. The sentiment seemed to be that networks cannot and/or should not refuse the inclusion of titles that include obscenity or other inflammatory terminology.

Reactions to question two included a wider range of opinions and fewer written comments. Some responses questioned the definition of "insignificant". This term was intentionally not defined with the hope that each respondent would furnish his/her own definition and respond accordingly. It appears that this was the basis used by most and, in general, it seems that the respondents were not so certain concerning their answer to this question.

Opinions and comments were not as strongly negative on question three as they were in question one, but there seemed to be a rather firm agreement that the author or publisher cannot demand the exclusion of his title from the data base.

Some of the respondents seemed to be unsure of the exact legal meaning of "due process" in question four. Those who reflected uncertainty usually expressed "no opinion". Those who seemed to reflect a satisfactory understanding of the legal concept tended to lean toward a strong "yes" response.

Responses to question five were scattered. There seemed to be recognition of legitimate technical or disciplinary reasons for denial of membership. In the absence of legitimate reasons, there seemed to be a questioning attitude as to whether a network can refuse membership to an institution if it chose to do so arbitrarily.

CONCLUSIONS

The specific questions dealt with in this study apparently have not yet been subject to litigation. There is some suggestion that litigation will be forthcoming in some of these areas.

Opinions reflected in the study suggest that: networks cannot refuse questionable titles, author or publishers cannot demand the exclusion of titles from the data base, the network probably cannot refuse "insignificant" titles, networks probably cannot refuse membership without legitimate reasons, and all parties probably have due process rights in dealing with parent networks.

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Trevecca Nazarene College

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Dear

I am collecting information for a course that I am taking at George Peabody College for Teachers.

As the director of a library that has recently been accepted as a member of SOLINET, I am interested in the legal implications of various questions relating to library networks. My primary interest is actual courtroom litigation. Beyond that I am interested in relevant laws that are presently in effect locally or nationally and practical problems that networks or their members have confronted in these areas.

My questions concerning litigation relating to computerized library networks are as follows:

1. Can the networks refuse the inclusion of titles that include obscenity or other inflammatory terminology (such as advocating the overthrow of the government) in the:

   a) actual wording of the title?
   b) within the publication?

2. Can the network refuse the inclusion of "insignificant" publications?

3. Can an author (or publisher) demand the exclusion of his title from the data base?

4. What are the implications for procedural due process for: authors, publishers, library directors, library patrons, institutions (libraries and/or their parent organizations), regional networks, parent networks, etc.?

5. Can the network refuse membership to a "qualified" institution? If so, on what bases? Are property rights involved here?

I would like to ask you to complete the enclosed questionnaire and return it to me in the envelope provided. There is a place on page three for you to include your name and address, if you so desire.

Thank you for your cooperation.

Sincerely,

Johnny J. Wheelbarger, Ed.D.
Director of Learning Resources

JJW/tac

QUESTIONNAIRE: LITIGATION RELATING TO COMPUTERIZED LIBRARY NETWORKS

Opinions

In the abscence of litigation lending clear directions in each of the following, please indicate what you think on each of the issues by checking the answer that most nearly reflects your opinion.

1. Can the networks refuse the inclusion of titles that include obscenity or other inflammatory terminology (such as advocating the overthrow of the government) in the:

   a) actual wording of the title?

   1. No ( ) 2. Probably not ( ) 3. No opinion ( )

   4. Possibly ( ) 5. Yes ( )

   b) within the publication?

   1. No ( ) 2. Probably not ( ) 3. No opinion ( )

   4. Possibly ( ) 5. Yes ( )

2. Can the network refuse the inclusion of "insignificant" publications?

   1. No ( ) 2. Probably not ( ) 3. No opinion ( )

   4. Possibly ( ) 5. Yes ( )

3. Can an author (or publisher) demand the exclusion of his title from the data base?

   1. No ( ) 2. Probably not ( ) 3. No opinion ( )

   4. Possibly ( ) 5. Yes ( )

4. Do authors, publishers, library directors, library patrons, institutions (libraries and/or their parent organizations), regional networks, etc. have due process rights in dealing with parent networks?

   1. No ( ) 2. Probably not ( ) 3. No opinion ( )

   4. Possibly ( ) 5. Yes ( )

5. Can a network refuse membership to a "qualified" institution?

   1. No ( ) 2. Probably not ( ) 3. No opinion ( )

   4. Possibly ( ) 5. Yes ( )

LITIGATION

Please list any court cases, that you may be aware of, that have attempted to resolve any of these questions. Include as much information as possible concerning the resolution of the case and bibliographical citations that may be used for further references.

1.

2.

3.

4.